IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.42/2006

Irragonda Dessai,
s/o. of Bhimagonda Dessai,
r/o. H.No.192, Tamdimol, Collem,
Sanguem, (Goa), native of at P.O. Hasur,
Shashigiri, Taluka Gadinglaj,
District Kolhapur (Maharashtra)
presently located as C.P. No.795,
at the Central Jail, Aguada,
Bardez, Goa. ..... Appellant/Accused.

V/s.

State of Goa, through
Collem Police Station. ..... Respondent/State.

Ms. Asha Desai, Advocate under Legal Aid Scheme for the appellant/accused.

Mr. C. A. Ferreira, Public Prosecutor for the respondent/State.

CORAM : S.A. BOBDE &
N.A. BRITTO, JJ.

DATE : JUNE 26, 2007.

ORAL JUDGMENT : (Per BRITTO, J.)

This appeal is by the accused who has been convicted for uxoricide and sentenced to suffer Life Imprisonment by Judgment dated 9th May, 2006 of the learned Ad hoc Additional Sessions Judge, Margao.

2. The accused, his wife Laxmi, the deceased and PW.7/Lala Shirodkar were all working for Salgaonkar Farm, at Collem owned by Anil Salgaonkar and managed by PW.9/ Manjunath Hegde. The relations between the accused and his wife, the deceased, were strained and apparently because the accused suspected her fidelity, suspecting that she was having extra marital relations with the said PW.7/Lala Shirodkar. Previously, there were assaults by the accused on his deceased wife and at least twice written complaints were filed to the police, one of which was registered under Crime No.12/02 and the other under Crime No.29/03. The Crime No. 12/02 under Sections 324, 506 I.P.C. became subject-matter of C.C. No.27/S/02 and the case was compounded before the learned Judicial Magistrate, First Class, Sanguem. The quarrels between the accused and the deceased even continued at the work place and, as a result of which, PW.9/Manjunath Hegde, terminated the services of the accused about 2 years prior to the incident.

3. The incident took place on 6.7.2003 in the very house of the accused and the deceased where their son PW.8/Sunil Dessai was present. The incident took place into two parts, so to say. First, it is the deceased who was assaulted and later PW.7/Lala Shirodkar. As far as the assault on PW.7/ Lala Shirodkar is concerned, the same became the subject-matter of Sessions

Case No.32/03 under Section 307 I.P.C. and it ended in conviction of the accused. The accused was sentenced to undergo Rigorous Imprisonment for a period of two years and directed to pay a fine of Rs.1,000/- in default, to undergo one month's Simple Imprisonment. The accused did not prefer any appeal against the said conviction and sentence and the same has attained finality.

4. As far as the first part of the incident is concerned, the accused was charged and tried with an allegation that on 6.7.2003 at about 6.30 hours, he had committed murder of his wife, Smt. Laxmi Dessai by assaulting her with a big knife on her head, face and stomach. The accused pleaded not guilty. In support of the charge, the prosecution examined 13 witnesses, including the Investigating Officer PW.13/PI Shri Raju Raut Dessai.

5. On the other hand, it was the case of the accused that he was falsely implicated and that he had not killed his wife at all and a false case was filed against him in collusion with the said PW.7/Lala Shirodkar and PW.9/Manjunath Hegde.

6. As already stated above, the incident of assault took place in the very house of the accused and the deceased and at a place in the house where

PW.8/Sunil Desai was sleeping. The knife used by the accused in assaulting the deceased, as stated by PW.13 Raut Dessai, was having a blade of 13.5 cms., its width being 5.5 cms. and a handle of 6 cms. The accused was caught with the said knife, as he was running, after assaulting the said PW.7/Lala Shirodkar and this has been deposed to, both by PW.2/Head Constable Arjun Gawas as well as PW.5/Head Constable Dilip Harmalkar who ran after the accused and apprehended him with the said knife after the assault on the said PW.7/Lala Shirodkar.

7. Reverting to the evidence of PW.8/Sunil Dessai, the said Sunil Dessai stated that his father and mother were working at Salgaonkar Farm at Collem. He stated that he had returned on the previous day from Sanvordem at about 7.30 p.m. and at that time, his father was accusing his mother of having illicit relations with the said PW.7/Lala Shirodkar and that thereafter at about 8 p.m. they went to sleep after dinner, and on the next day, at about 6.30 a.m. he heard his mother shouting and he got up and stood near the cot and saw his father assaulting his mother with a "*Koita"* which is used for cutting sugarcane crop. According to him, the accused assaulted her on the face and stomach and after that the accused wrapped his mother in a bedsheet and he stated that he would go to kill PW.7/Lala Shirodkar. The accused went away with the same *koita* which was used by the accused to kill his

mother. PW.8/Sunil Dessai further stated that he did not intervene as he was afraid and thereafter, he went close to his mother and saw the injuries on her face. He also stated that when his father assaulted his mother on her stomach, the intestines of his mother had come out and when he saw his mother after the accused went away, he found that she was dead, and, thereafter, he went to the police station and lodged a complaint against his father, which he produced at Exhibit C 43.

8. The only submission made by the learned Counsel on behalf of the accused is that PW.8/Sunil Dessai might have been sleeping and, as such, had not seen the incident. This submission is made on the basis of a statement in his cross examination, wherein he stated that after he got up and went to lodge a complaint, he saw his father, the accused for the first time when he was brought at the police station by the police. In our view, the said statement does not at all show that PW.8/Sunil Dessai had not witnessed the incident. Evidence of a witness cannot be read sentence by sentence and has got to be read as a whole. That apart, what PW.8/Sunil Dessai sought to convey by the said statement is that he saw his father for the first time when he was brought to the police station, after he went to lodge the complaint. In other words, before he went to lodge the complaint he certainly saw his father assaulting his mother in the very place of the house where he was sleeping.

On behalf of the accused, no reason good-enough, has been advanced as to why PW.8/Sunil Dessai ought to have deposed against his father, the accused. It is true that in his further cross examination he stated that the relation of his father was not good with his mother as he was picking up quarrels with his mother and on account of the same, his relations with his father were also not good. If his father was assaulting his mother, the relations between him and his father certainly could not be that good but because of that, in our opinion, PW.8/Sunil Dessai would not falsely depose against his father. The evidence of PW.8/Sunil Dessai is consistent and convincing. The learned trial Court has accepted the same. We see no reason as to why the same should not be accepted as well. The evidence of PW.8/Sunil Dessai, once accepted, clearly proves that it is the accused who had brutally assaulted the deceased with the *Koita/*big knife.

9. The version of PW.8/Sunil Dessai has also been sufficiently corroborated by PW.6/Dr. Silvano Sapeco who carried out the post mortem examination of the deceased and who found as many as eight injuries, description of which he has given in his evidence as well as in the Memorandum of Autopsy produced by him. From his evidence, it can be seen that the first injury was an oblique chop injury 9x3x1 cms. x bones and brain deep placed obliquely along frontal region of scalp. The other two injuries

were also bones and brain deep and were on the left temporal region of 13x7x1 cms and 22x9x1 cms. The fourth injury was a chop injury of 6x2x2 cms. on the left wrist region. The fifth injury was in an area of 29 x 13 cms. along lowest front of chest and upper abdomen. As per Dr. Sapeco, there were four traverse chop injuries, each having a length of 22 cms., 17 cms., 19 cms., and 15 cms., respectively with evisceration of intestines and chop cut liver pieces whose depth extended upto 13 cms. variable with cuts for abdominal blood vessels and for ribs from 6th rib onwards. The sixth injury was a chop injury of 17x9x1 cms. on the facial bones. The seventh was on the chin front, and the eighth was on the upper arm, the details of which have also been given by Dr. Sapeco, both in his evidence before the Court as well as in his autopsy report. We need not reproduce the said details herein.

10. As per the opinion of Dr. Sapeco, the death of the deceased was caused due to haemorrhagic shock associated with fractures of head, face, ribs and left wrist bones and damage for underlying vital organs, as a result of chop injuries No.1 to 6 which were individually and collectively necessarily fatal. The prosecution also produced photographs taken by PW.11/Devidas Sukthankar, twenty one in number along with negatives, and the said photographs also depict some of the injuries described by PW.6/Dr. Sapeco and the evidence of Dr. Sapeco when seen in the light of the said photographs,

prove the brutality of the assault with the said knife by the accused upon the deceased.

11. The learned Counsel on behalf of the accused with a view to bring the case within the purview of exception one to Section 300 I.P.C. next contends that there was grave and sudden provocation from the deceased for the accused to deal in the manner he did. In support of the submission, the learned Counsel has placed reliance on a Judgment of a Division Bench of this Court in the case of ***Ashok Soma Misal vs. State of Maharashtra***, (2006 ALL MR (Cri) 333). In our view, the facts of that case are distinguishable from the facts of this case. In that case, there was a grave and sudden provocation given by the wife by stating that she would go alone to the Village where she had affairs with two persons. In our view, in this case, there is no whisper of any provocation whatsoever having been given by the deceased, either grave or sudden, and, as the evidence shows, it is the accused who quarrelled with his wife on the previous night and again next day in the morning, assaulted her with the said deadly weapon and that too mercilessly until her intestines came out. On the other hand, Shri Ferreira, the learned Public Prosecutor contends that the case is covered by clause firstly to Section 300 I.P.C.. Shri Ferreira also drew our attention that the Exception I to Section 300 of I.P.C. is also subject to a proviso that the

provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

12. As far as grave and sudden provocation is concerned, the law is well settled. The Apex Court in the case of ***K.M. Nanavati vs. State of Maharashtra,*** (AIR 1962 SC 605) has said that the test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first exception to Section 300. The Apex Court has also said that the mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. As far as the facts of this case are concerned, it appears that there was no provocation at all on the part of the deceased and, on the contrary, it appears that it is the accused who assaulted the deceased by premeditation and calculation and thereafter proceeded to assault PW.7/Lala Shirodkar, suspecting the latter as the person with whom his wife was having extra-marital relation. After the previous night fight with his wife, the accused had the whole night to regain his self control, if he wanted

to, but this night, he utilised only to calculate as to how to get rid of his wife as well as her suspected paramour.

13. On behalf of the respondent, the learned Public Prosecutor has placed reliance on the case of ***State of Andhra Pradesh vs. Rayavarapu Punnayya and another,*** ((1976) 4 SCC 382) to support the case of the prosecution that the case is squarely covered by clause firstly to Section 300 I.P.C. In this case, the Apex Court has said that whenever a court is confronted with the question whether the offence is `murder' or `culpable homicide not amounting to murder', on the facts of a case, it would be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of `murder' contained in Section 300. If the answer to this question is in the negative, the

offence would be `culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be `culpable homicide not amounting to murder', punishable under the first part of Section 304, Penal Code. The Apex Court also noted that the above are only broad guidelines and not cast iron imperatives.

14. As far as this case is concerned, it is evident that the accused for long suspected his wife for having illicit relations with PW.7/Lala Shirodkar, and decided to do away with both, firstly by brutally assaulting his wife with number of injuries even until the intestines came out from the abdomen in which he succeeded and then wrapped her body in the bedsheet and thereafter proceeded to assault PW.7/Lala Shirodkar where he could not succeed entirely.

15. Clause firstly of Section 300 IPC deals with death being caused by an act with intention of causing death. Once the intention to kill is proved, the offence is murder unless one of the exceptions are applied. It is well said that intention is what intention does. In deciding the question of intention

Courts generally look at factors such as the nature of weapon used, the part of the body on which the blow is given, the force of the blow and its number. In this case, from the nature of injuries, the weapon used, their location on vital parts of the body and force with which they were inflicted lead only to one inference that the accused inflicted the same with the intention of killing his wife.

16. Before parting with this Judgment, we would like to make certain observations as regards inaccurate reports submitted by the experts. In this case, PW.6/Dr. Sapeco had forwarded a sample of blood of the deceased to the blood bank on 6.7.2003 itself and on the same day, it was found by Dr. Clare Mello of the Blood Bank that his blood group could not be detected as the blood sample had hemolyzed. The prosecution had not been able to throw much light over it. The report received from C.F.S.L., Hyderabad in Criminal Appeals No.7 and 8/2006 is also far from satisfactory. The prosecution certainly ought to find out the reasons why such inaccuracies are reflected in the reports, so that in future such inaccuracies do not come in the way of successful prosecution. As far as this case is concerned, the report was of no consequence.

13. In view of the above discussion, we find there is no infirmity

either in the conviction or the sentence imposed upon the accused. There is no merit in this appeal, which is hereby dismissed.

S.A. BOBDE, J.

N.A. BRITTO, J.

ssm.